

Effect of Certain Provisions of H.R. 7199

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

Effect:

The language is so broad that it could prohibit an agency noting the attendance of an employee at meetings or gatherings of subversive and radical groups designed to undermine the Government of the United States.

Section 1 (d). Prohibits requiring an employee to report his unofficial outside activities duties unless reason to believe a conflict with official duties.

Effect:

This section is of primary importance to security agencies which for security reasons are concerned with outside activities of employees. Contacts with foreign officials are to be reported as a matter of information to protect the employee should the official be a member of an intelligence service. Similarly, security agencies must review publications and speeches of employees in advance to insure that there is no inadvertent disclosure of classified information.

Section 1 (e). Prohibits requiring or requesting any applicant or employee to submit to interrogation concerning: his personal relationship with any person related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. Prohibits the use of psychological testing into these same areas. These questions may be asked only by a physician to determine if an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge. Section 6 provides CIA and NSA the use of psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

Psychological testing in these areas is an important part of the total screening process to weed out applicants with undesirable traits. The exemption provided by Section 6 does not recognize that psychological screening is an integral part of the processing in every case.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act.

Effect:

Creates the same potential for harassment as Section 4. If one loses his case before the Board, he can still take it to the courts.

Section 7. Recognizes the statutory authority of the Directors of CIA and NSA to protect or withhold certain information in the national interest.

Effect:

Information which the Directors determine must withhold may actually provide the only basis for refuting unfounded allegations. Since the sanctions in the bill are against the alleged offending employee, not the Directors, the net effect of withholding information is to make the charged employee bear the consequences, which can include loss of pay and termination. However, to disclose such information with its consequential damage to the national intelligence effort is even less acceptable.

FOR OFFICIAL USE ONLY

Effect of Certain Provisions of H.R. 7199 (Wilson)

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

Effect:

The language is so broad that it could prohibit an agency noting the attendance of an employee at meetings or gatherings of subversive and radical groups designed to undermine the Government of the United States.

Section 1 (d). Prohibits requiring an employee to report his unofficial outside activities duties unless reason to believe a conflict with official duties.

Effect:

This section is of primary importance to security agencies which for security reasons are concerned with outside activities of employees. Contacts with foreign officials are to be reported as a matter of information to protect the employee should the official be a member of an intelligence service. Similarly, security agencies must review publications and speeches of employees in advance to insure that there is no inadvertent disclosure of classified information.

Section 1 (e). Prohibits requiring or requesting any applicant or employee to submit to interrogation concerning: his personal relationship with any person related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. Prohibits the use of psychological testing into these same areas. These questions may be asked only by a physician to determine if an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge. Section 6 provides CIA and NSA the use of psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

Psychological testing in these areas is an important part of the total screening process to weed out applicants with undesirable traits. The exemption provided by Section 6 does not recognize that psychological screening is an integral part of the processing in every case.

FOR OFFICIAL USE ONLY

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information as stated in Section 1 (e) above. Section 6 provides CIA and NSA use of the polygraph in these proscribed areas on the same basis as above.

Effect:

As with psychological testing, polygraph testing is of primary concern to security agencies who have found it to be an invaluable supplement to field investigations but uniquely effective in detecting certain latent types of security vulnerabilities. The exemption provided by Section 6 does not recognize that polygraph testing is an integral part of processing in every case.

Section 1 (i). Prohibits requesting any employee to disclose his total financial worth or liabilities. Excepted are employees who make final determinations with respect to claims requiring expenditure of federal funds. Also excepted are reports for determining liabilities or obligations imposed by law. CIA and NSA under Section 6, may inquire into the financial matters of an employee or applicant after a finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

The broad language could prohibit inquiring into such matters as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, not directly related to national security and not covered by the exemption granted CIA and NSA.

Section 1 (j). Prohibits requesting financial disclosure from those employees excepted under the first proviso of subsection (i) above other than specific items tending to indicate a conflict of interest.

Effect:

Full financial disclosure assists the employee and the Government in making a difficult decision as to conflict of interest. Without full disclosure, this burden apparently is placed entirely upon the employee.

Section 1 (k). Prohibits requiring an employee, under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of CIA and NSA, counsel must be either another employee of, or approved by, the agency involved. This right inures to the employee when first questioned and does not require that the employee be accused of any wrongdoing before he may request presence of counsel or friend.

FOR OFFICIAL USE ONLY

Effect:

This section is of concern to all agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is then entitled to counsel. This is of even more concern to the security agencies which may have to question an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

Effect:

This section, combined with Section 4 below, could seriously undermine the authority of any agency to conduct its business. For example, any employee being transferred could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

Effect:

This section with section 1 (1) is most serious. With the written consent of any person aggrieved, any employee organization may intervene in such action. This could establish a basis for jurisdictional conflicts between competing unions. Further, this section and Section 5 establish two new forums for an employee to contest his termination. Since court action is against the offending supervisor rather than the department or agency; the practical result is litigation between employees. This can expose supervisors to continued harassment by disgruntled employees resulting in a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility. With respect to applicants, this section has most serious implications. Any applicant who is not hired for the position he feels qualified to fill can initiate a suit. Further, subversives or radical groups could file suits for the sole purpose of harassment.

FOR OFFICIAL USE ONLY

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act.

Effect:

Creates the same potential for harassment as Section 4. If one loses his case before the Board, he can still take it to the courts.

Section 7. Recognizes the statutory authority of the Directors of CIA and NSA to protect or withhold certain information in the national interest.

Effect:

Information which the Directors determine must withhold may actually provide the only basis for refuting unfounded allegations. Since the sanctions in the bill are against the alleged offending employee, not the Directors, the net effect of withholding information is to make the charged employee bear the consequences, which can include loss of pay and termination. However, to disclose such information with its consequential damage to the national intelligence effort is even less acceptable.

Section-By-Section Analysis of Certain Provisions
of "Invasion of Privacy" Bills (H. R. 7969, H. R. 7199*, S. 1438)

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the Executive Branch, or by any outside parties or organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit a department or agency from taking notice of the attendance of an employee at meetings of subversive organizations or meetings designed to undermine the Government of the United States. Many departments and agencies, and particularly those dealing with security matters, would find such a prohibition intolerable.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

The purpose of this section is to guarantee the freedom of an employee to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or inaction, his involvement or his noninvolvement. It is to assure that he is free of intimidation or inhibition as a result of the employment.

This section is of primary importance to those agencies concerned with security matters which could be seriously compromised by employee activities and relationships not directly connected with his employment. Security agencies must request their employees to report contacts with foreign officials not only to give the employer notice of the relationship but also to protect the employee in his personal security should the foreign official be a member of an intelligence service. Similarly, the security agencies must request employees to submit publications and speeches for clearance in advance to insure that there is no inadvertent disclosure of intelligence information.

*See page 6

CONFIDENTIAL

Section 8. Recognizes the statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to protect or withhold certain information from unauthorized disclosure. However, information which the Director determines must be protected and not disclosed may actually provide the only basis for refuting unfounded allegations. Since the sanctions embodied in the bill run against the alleged offending employee not the Director making the determination, the net effect of withholding information to protect vital national interests is to make the charged employee bear the consequences, which can include loss of pay and even termination of employment. On the other hand, disclosure of such information with its consequential damage to the national intelligence effort is even less acceptable.

Section 9. Grants the FBI a complete exemption from the act.

*Note: H.R. 7199 is similar, except provisions of Section 7 above are omitted and FBI is granted partial, not full exemption.

CONFIDENTIAL

Section-By-Section Analysis of Certain Provisions of S. 782

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the Executive Branch, or by any outside parties or organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit a department or agency from taking notice of the attendance of an employee at meetings of subversive organizations or meetings designed to undermine the Government of the United States. Many departments and agencies, and particularly those dealing with security matters, would find such a prohibition intolerable.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

The purpose of this section is to guarantee the freedom of an employee to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or inaction, his involvement or his noninvolvement. It is to assure that he is free of intimidation or inhibition as a result of the employment.

This section is of primary importance to those agencies concerned with security matters which could be seriously compromised by employee activities and relationships not directly connected with his employment. Security agencies must request their employees to report contacts with foreign officials not only to give the employer notice of the relationship but also to protect the employee in his personal security should the foreign official be a member of an intelligence service. Similarly, the security agencies must request employees to submit publications and speeches for clearance in advance to insure that there is no inadvertent disclosure of intelligence information.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

Section 1'(e). Makes it unlawful to require or request any applicant or employee to submit to any interrogation or examination designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. The section also prohibits the use of psychological testing to inquire into these same areas. These questions may be asked only on the determination by a physician that they are necessary to enable him to determine whether or not an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge.

A partial exemption from this subsection is provided for CIA and the NSA in section 6. These agencies may use psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security.

Psychological testing in these areas is part of the total screening process which has been established to weed out applicants with undesirable traits. It is of primary concern to security agencies. The exemption provided by section 6 affords some relief, but it will still be necessary to make personal findings in each individual case. This implies that psychological screening is an exception rather than the necessary procedure in every case.

Section 1'(f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters.

The purpose is not to prohibit the use of the polygraph but to prohibit its use to elicit information considered to be of a personal nature.

A partial exemption from this subsection is provided for CIA and NSA in section 6. The polygraph may be used in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the test is necessary to protect the national security. As with the psychological testing, polygraph testing is of primary concern to the security agencies who have found it to be not only an invaluable supplement to field investigations but uniquely effective in detecting certain types of security vulnerabilities. It is particularly useful in uncovering undesirable characteristics which do

2
~~CONFIDENTIAL~~

CONFIDENTIAL

not appear in field investigations. The requirement for individual findings in each case to obtain relief from this subsection implies that polygraph screening is an exception rather than a necessary procedure.

Section 1 (i). Makes it illegal to request any employee to disclose any items of his property, income, or other assets, sources of income, or liabilities. The first proviso excepts those employees who have authority to make final determination with respect to claims which require expenditure of monies of the United States. The second proviso excepts reports as may be necessary or appropriate for the determination of liabilities for taxes, tariffs, custom duties, or other obligations imposed by law.

A partial exemption for the NSA and the CIA has been granted in section 6. Financial disclosure may be requested of an employee or applicant on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security. The broad language used could prohibit requesting certain information from employees for such things as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, which are not directly related to national security and thus not covered by the partial exemption granted CIA and NSA.

Section 1 (j). Makes it illegal to request financial disclosure from those employees excepted under the first proviso of subsection (i) other than specific items tending to indicate a conflict of interest.

Full financial disclosure assists both the employee and the Government in making what at best is a difficult decision as to conflict of interest. In the absence of full disclosure, it appears that this burden is placed entirely upon the employee.

Section 1 (k). Makes it illegal to require an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of NSA and CIA, counsel must be either another employee of, or approved by, the agency involved.

This right inures to the employee at the inception of the investigation and does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend.

CONFIDENTIAL

CONFIDENTIAL

This section is understood to be of concern to all departments and agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is entitled to counsel at this stage. The section is of even more concern to the security agencies which may find it necessary to interrogate an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

The purpose of this section is to prohibit discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

This section, combined with section 4, could seriously undermine the authority of any executive agency to conduct its business. For example, any employee being transferred to a post to which he objects could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

The potential of this section when combined with section 1 (1) is most serious. With the written consent of any person affected or aggrieved by a violation or threatened violation, any employee organization may bring action on behalf of such person, or may intervene in such action. This would appear to establish a basis for jurisdictional conflicts between competing unions. Further, this section and section 5 establish two new forums for an employee who is terminated for cause to contest the termination on the issue of a violation of this act.

Since the court action authorized by the bill is against the offending supervisor rather than the department or agency, the practical result is litigation between one employee and another. This in turn could expose supervisors to continued harassment by disgruntled employees with the result of a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility.

CONFIDENTIAL

CONFIDENTIAL

With respect to applicants, this section has most serious implications. All departments and agencies would be subject to harassment by any applicant who is not hired for the position he feels qualified to fill. For example, subversives acting on their own or on instruction from foreign agents could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act short of recourse of the judicial system. It creates the same potential for harassment as section 4. If the charged employee loses his case before the Board, he can still take it to the courts.

Section 6. Permits the CIA and the NSA to request employees or applicants to take a polygraph test or psychological testing designed to elicit information concerning his personal relationship to any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement if the Directors, or their designees, make a personal finding with regard to each individual case that the test or information is required to protect the national security. In view of previous comments in connection with subsection 1(e) (psychological testing) and with subsection 1(f) (polygraph) this section implies that these screening aids will be used as an exception rather than the necessary procedure in every case.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before either the United States district court or the Board on Employees' Rights. This requirement for notice does not apply to CIA or NSA applicants who, along with all other Executive Branch employees and applicants, have a right to bring an action before the Board or the district court and disregard existing administrative remedies or grievance procedures.

The section reaffirms the existing statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to terminate the employment of any employee. However, the potential for statutory conflict still exists should the Director terminate an employee for cause under existing statutory authority and a district court order reinstatement on a finding of a violation of the act.

CONFIDENTIAL

CONFIDENTIAL

Section 8. Recognizes the statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to protect or withhold certain information from unauthorized disclosure. However, information which the Director determines must be protected and not disclosed may actually provide the only basis for refuting unfounded allegations. Since the sanctions embodied in the bill run against the alleged offending employee not the Director making the determination, the net effect of withholding information to protect vital national interests is to make the charged employee bear the consequences, which can include loss of pay and even termination of employment. On the other hand, disclosure of such information with its consequential damage to the national intelligence effort is even less acceptable.

Section 9. Grants the FBI a complete exemption from the act.

CONFIDENTIAL